REMARKS

Upon entry of these amendments, claims 21-38 are pending. Claims 1-20 are canceled without prejudice. Applicants reserve the right to pursue any canceled subject matter in a related application. Supports for new claims can be found in the specification and the claims as originally filed. For example, support for new claims 21-29 can be found in the specification, *e.g.*, at page 6, lines 23-27; support for new claim 30 can be found in the specification, *e.g.*, at page 116, line 1, to page 123; support for new claim 31 can be found in the specification, *e.g.*, at page 6, lines 5-22; support for new claim 32 can be found in the specification, *e.g.*, at page 6, line 39, to page 7, line 13; support for new claim 33 can be found in the specification, *e.g.*, at page 4, lines 7-13; support for new claims 34-36 can be found in the specification, *e.g.*, at page 7, lines 29-33; and support for new claims 37-38 can be found in the specification, *e.g.*, at page 28, lines 8-15. No new matter is introduced.

The Examiner has required an election under 35 U.S.C. § 121 of one of the following inventions:

I. Claims 1-3 and 15 drawn to an isolated polypeptide, a composition comprising a polypeptide and a kit comprising the said composition, classified in class 530, subclass 350.

II. Claims 4-9, drawn to a method of determining the presence of polypeptide, classified in class 435, subclass 7.1.

III. Claim 10, drawn to a method for screening for a modulator of activity comprising administering a compound to a recombinant animal, classified in class 800, subclass 3.

IV. Claims 11-12, drawn to an antibody, classified in class 530, subclass 587.1.

V. Claims 13-14 and 17-20, drawn to a nucleic acid molecule, a vector comprising a nucleic acid molecule, a cell comprising a vector comprising a nucleic acid molecule and method of producing a polypeptide, classified in class 435, subclass 69.1.

VI. Claim 16 drawn to a method of treating a pathological state in a mammal, classified in class 514, subclass 12.

The Examiner contends that Groups I - VI are distinct, each from the other.

The Examiner additionally requires that Applicants select an amino acid/nucleic acid sequence that is consonant with the elected invention.

In response, Applicants hereby elect the invention of Group V, Claims 13-14 and 17-20 (new claims 21-38), drawn to a nucleic acid molecule, a vector comprising a nucleic acid molecule, a cell comprising a vector comprising a nucleic acid molecule and method of producing a polypeptide, classified in class 435, subclass 69.1.

Applicants also hereby provisionally elect, with traverse, a nucleic acid sequence encoding a polypeptide comprising an amino acid sequence of SEQ ID NO: 104.

With respect to the Examiner's request of electing a single amino acid/nucleic acid sequence, Applicants respectfully traverse and request that the requirement be withdrawn.

The Examiner's attention is invited to M.P.E.P. § 803.04 (Eighth Edition, August 2001, revised May 2004)

> It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined.

Thus, at least ten (10) sequences should be examined in the instant application. Moreover, as shown in page 116, line 1, to page 127 of the specification, SEQ ID NOs: 100, 102, 104, 106, 108, 110, 112, and 114 all represent variants or fragments (*e.g.*, cytoplasmic domain) of the NOV9 gene. ClustalW alignments of the NOV9 variants and fragments are shown in Appendix A and B (attached hereto). Applicants submit that to search these sequences together would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001, revised February 2003) states:

> If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, Applicants request that all the nucleic acids encoding SEQ ID NOs: 100, 102, 104, 106, 108, 110, 112, and 114 be elected. In the alternative, Applicants request that election of a single SEQ ID NO be considered a species election, and the remaining SEQ ID NOs of the NOV9 gene be re-entered into the genus once the elected sequence is deemed allowable. Applicant retains the right to petition from the restriction requirement under 37 C.F.R. §1.144.

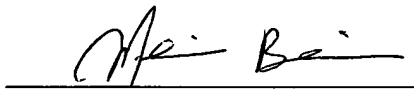
Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim pursuant to 37 C.F.R. § 1.141.

CONCLUSION

Applicants respectfully request that the amendments and remarks made herein be entered and made of record in the file history of the present application. Applicants respectfully submit that the pending claims are in condition for allowance. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

Date: January 26, 2005



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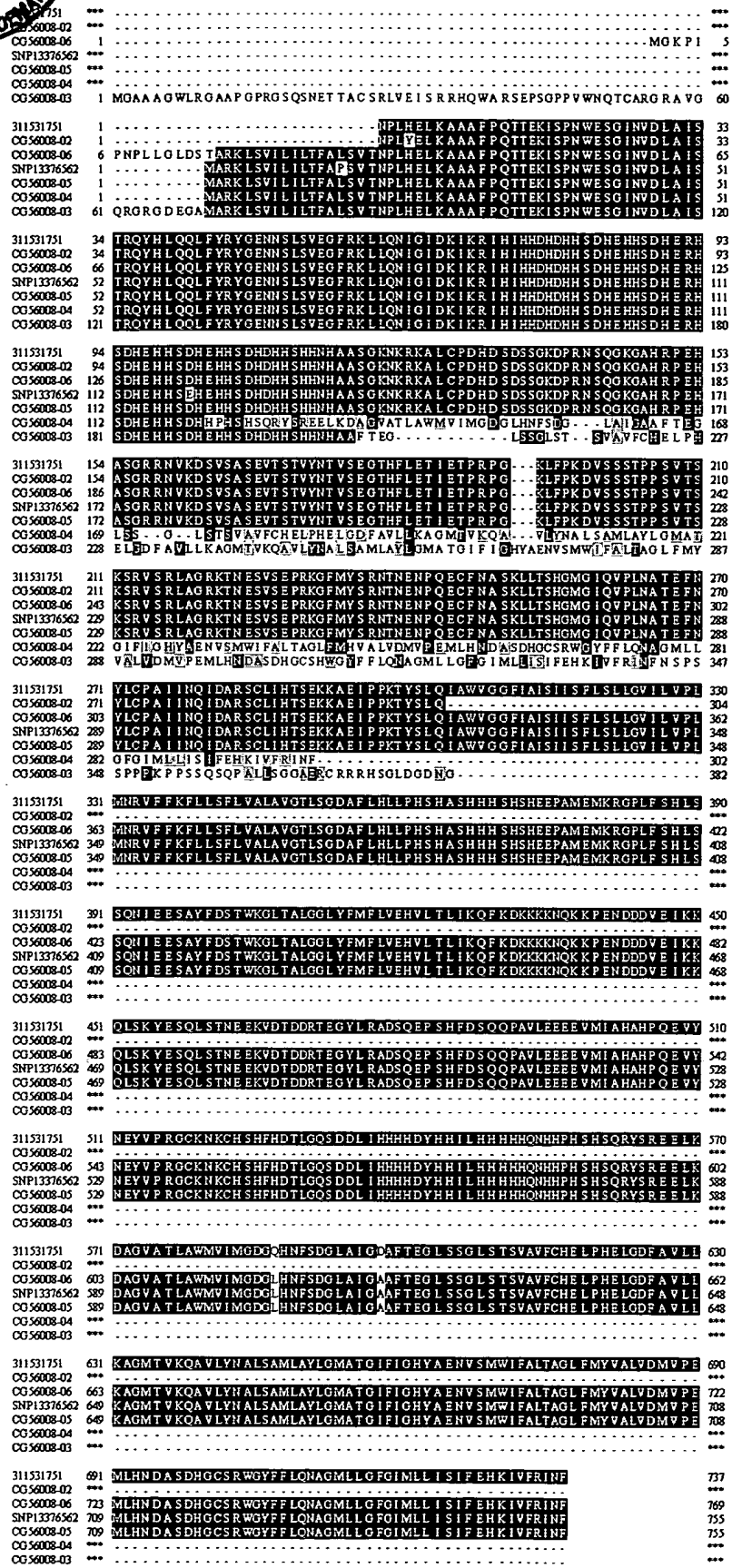
Mei L. Benni (Reg. No.)

CuraGen Corporation

555 Long Wharf Drive
New Haven, CT 06511
Tel: (203) 974-6306

Appendix A: ClustalW Alignment of NOV9 Variants



Appendix B: ClustalW Alignment of NOV9 Variants CG56008-03 (SEQ ID NO: 102) and CG56008-04 (SEQ ID NO: 104)

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CG56008-03   1 MGAAAGWLRGAAPGPRGSQSNETTACSRLVEISRRHQWARSEPSGPPVWNQTCARGRAVG  60
CG56008-04 *** ------------------------------------------------------------ ***

CG56008-03  61 QRGRGDEGAMARKLSVILILTFALSVTNPLHELKAAAFPQTTEKISPNWESGINVDLAIS 120
CG56008-04   1 ---------MARKLSVILILTFALSVTNPLHELKAAAFPQTTEKISPNWESGINVDLAIS  51

CG56008-03 121 TRQYHLQQLFYRYGENNSLSVEGFRKLLQNIGIDKIKRIHIHHDHDHHSDHEHHSDHERH 180
CG56008-04  52 TRQYHLQQLFYRYGENNSLSVEGFRKLLQNIGIDKIKRIHIHHDHDHHSDHEHHSDHERH 111

CG56008-03 181 SDHEHHSDHEHHSDHDHHHS----------------------HHNH--------AAFTEGLSS 212
CG56008-04 112 SDHEHHSDHHPHSHSQRYSREELKDAGVATLAWMVIMGDGLHNFSDGLAIGAAFTEGLSS 171

CG56008-03 213 GLSTSVAVFCHELPHELGDFAVLLKAGMTVKQAVLYNALSAMLAYLGMATGIFIGHYAEN 272
CG56008-04 172 GLSTSVAVFCHELPHELGDFAVLLKAGMTVKQAVLYNALSAMLAYLGMATGIFIGHYAEN 231

CG56008-03 273 VSMWIFALTAGLFMYVALVDMVPEMLHNDASDHGCSHWGYFFLQNAGMLLGFGIMLLISI 332
CG56008-04 232 VSMWIFALTAGLFMHVALVDMVPEMLHNDASDHGCSRWGYFFLQNAGMLLGFGIMLLISI 291

CG56008-03 333 FEHKIVFRINFNSPSSPPPKPPSSQSQPALLSGGAERCRRRHSGLDGDNG            382
CG56008-04 292 FEHKIVFRINF---------------------------------------            302
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